NO. X06-UWY-CV18-6046436-S	**:**	**SUPERIOR COURT**
ERICA LAFFERTY, ET AL.	**:**	**COMPLEX LITIGATION DOCKET**
V.	**:**	**AT WATERBURY**
ALEX EMRIC JONES, ET AL.	**:**	**MARCH 25, 2022**

NO. X06-UWY-CV18-6046437-S	**:**	**SUPERIOR COURT**
WILLIAM SHERLACH	**:**	**COMPLEX LITIGATION DOCKET**
V.	**:**	**AT WATERBURY**
ALEX EMRIC JONES, ET AL.	**:**	**MARCH 25, 2022**

NO. X06-UWY-CV18-6046438-S	**:**	**SUPERIOR COURT**
WILLIAM SHERLACH, ET AL.	**:**	**COMPLEX LITIGATION DOCKET**
V.	**:**	**AT WATERBURY**
ALEX EMRIC JONES, ET AL.	**:**	**MARCH 25, 2022**

MOTION FOR FINDING OF CIVIL CONTEMPT, ISSUANCE OF ORDERS TO SECURE ALEX JONES ATTENDANCE AT DEPOSITION, AND ISSUANCE OF FURTHER SANCTIONS ORDERS

Alex Jones is in contempt of this Court. He is so afraid of being deposed in this case that he refused to attend his own deposition, even after the Court ordered him to do so. His invented excuses for his absence only confirm his contempt. Twice Mr. Jones sought "emergency" protective orders based on bogus argument that he was unable to attend his deposition due to health concerns. The Court appropriately rejected those efforts, finding, in part, that the Court

had been "deceived by the evidence and the argument Mr. Jones made" concerning his health restrictions. Ex. A, 3/23/22 Hrg. Tr. at 17:2-5.

By order of the Court, Mr. Jones was required to appear for his deposition on March 23, 2022. He did not. By a subsequent order of the Court and on pain of contempt, Mr. Jones was required to appear for his deposition on March 24, 2022. He did not. It is impossible to overstate the level of contempt that Mr. Jones has shown for the Court's authority throughout this litigation. It is also impossible to overstate the contempt he has shown for the plaintiffs. With dignity and courage, the plaintiffs subjected themselves to hours and hours of painful questioning by Mr. Jones's lawyers – and Mr. Jones plays sick when it is his turn to tell the truth under oath. He begs his audience to send him money to support his legal defense[1] and then ducks his deposition.

It is absolutely no surprise that today – the day after he skipped his deposition – Mr. Jones was back on the air from his studio, explaining to his audience that the emergent medical condition that supposedly manifested just days before his deposition turned out to be "a blockage in his sinus."[2] Now that the blockage has cleared, he feels "like a new person." *Id*. It is no coincidence that Mr. Jones's sinus cleared as soon as plaintiffs' counsel cleared Texas airspace.

The plaintiffs now move the Court to enter a finding of civil contempt and to issue orders to coerce Mr. Jones's attendance at deposition, and to coerce that attendance immediately. More specifically, the plaintiffs move the Court to order *all* of the following:

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[1] *See* Save Infowars Legal Defense Fund, https://www.givesendgo.com/G2CK4) (last accessed March 25, 2022).

[2] *See* The Alex Jones Show, originally aired at https://www.infowars.com/show/ (March 25, 2022).

A) That Mr. Jones is adjudicated to be in contempt of court; and that such contempt may be purged when Mr. Jones sits for deposition at the offices of Koskoff, Koskoff & Bieder, PC; 350 Fairfield Avenue, Bridgeport, Connecticut and completes his deposition;

B) That Mr. Jones's profit-motives for broadcasting lies about the plaintiffs and the Sandy Hook shooting, his intent to harm the plaintiffs through those lies, and his culpable and malicious subjective intent are all established, and he is precluded from offering evidence to the contrary, and that these findings and preclusions will become permanent if Mr. Jones does not complete his deposition by April 15, 2022;[3]

C) That Mr. Jones is to pay conditional fines beginning at $25,000 per day and escalating to $50,000 per day to the Clerk of the Superior Court until he completes his deposition; and

D) That Mr. Jones is to be incarcerated until he sits for deposition[4]; and

E) That Mr. Jones is to pay to the plaintiffs' fees and costs incurred in connection with the deposition that Mr. Jones failed to attend, including, but not limited to time expended by plaintiffs' counsel and staff in the preparation, arrangement and travel to/from the deposition, lodging, transportation, and deposition costs associated with the court reporter, videographer and venue; and

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[3] Mr. Jones's deposition would cover a broad range of topics, of which subjective intent is the most important. Framing the exact wording of these findings and preclusions is beyond the scope of what can be accomplished under the time frame set for this brief, as is identifying all the findings and exclusions that would be necessary if he is not deposed. The plaintiffs reserve the right to supplement and develop these findings, both with supplemental briefing to support this Motion and at a later date, if Mr. Jones is not deposed.

[4] The plaintiffs recognize that this penalty would need to be enforced in Texas. Nonetheless, the Court should issue them.

F) That the plaintiffs are entitled to such scheduling accommodations as their counsel may require due to the time wasted by Mr. Jones's willful refusal to attend his deposition, with the understanding that any such accommodations will *not* be reason for Mr. Jones to seek an extension of the trial date; and

G) Any other measures the Court deems appropriate to coerce Mr. Jones's attendance at his deposition, or to remedy the prejudice to the plaintiffs.

I. WILLFUL REFUSAL TO COMPLY WITH COURT-ORDERED DEPOSITION

Mr. Jones's deposition was noticed to be taken in Austin, Texas on March 23 and March 24. Ex. B, Jones 3/23/22-3/24/22 Dep. Notice.

Two days before his deposition was to commence, Mr. Jones's counsel sought an emergency protective order to prevent the deposition, which the Court denied. DN 730.10. The claimed basis was that a physician had advised Mr. Jones he should not attend his deposition. DN 730, Def. 3/21/22 Am. Mot. for Protective Order at 1. At oral argument the day before Mr. Jones's deposition, counsel stated that the physician directed Mr. Jones to stay at home pending the outcome of unspecified medical testing. *E.g.* DN 737, 3/22/22 Hrg. Tr. at 2:15-17. Confronted with Mr. Jones's own broadcasts, Mr. Jones's counsel then conceded that Mr. Jones was broadcasting live from his studio, which is not at his home, on both the day the emergency motion was filed and the day it was argued. DN 737, 3/22/22 Hrg. Tr. at 18:16-17 (conceding Mr. Jones was broadcasting on March 21); DN 733, Jones Defs.' 3/23/22 Notice (conceding Mr. Jones was broadcasting on March 22 from the studio, which is not at his home).

The Court denied the motion for protective order, and plaintiffs' counsel appeared for deposition in Austin on March 23. Mr. Jones did not attend. Ex. C, 3/23/22 Dep. Tr. A. Jones –

Not Appearing at 6:21-24, 8:3-6 (Attorney Mattei, noting Mr. Jones's absence; Attorney Pattis, indicating Mr. Jones "has no intention to appear here today").

At an emergency hearing held March 23, the Court ordered Mr. Jones to appear for his deposition March 24. Ex. A, 3/23/22 Hrg. Tr. at 30:26-27; 31:1-2 ("I am going to order [Mr. Jones] to appear for his deposition tomorrow ordered as a part of the official court file, so that order will be in writing and it's also on the record now."); DN 735, 3/23/22 Order.

Mr. Jones renewed his motion for protective order, again asserting medical issues. The Court found that

> Mr. Jones has by all accounts broadcast live from his studio on Monday and Tuesday, in disregard of Dr. Marble's purported instructions to stay home and rest. Additionally, plaintiffs' counsel alleges that even today, Mr. Jones called into his show, speaking on the war in Ukraine, although the court has no evidence to confirm that. While the court has no details regarding Dr. Offutt's background or qualifications, it appears both from Dr. Marble's letter that the court reviewed yesterday in camera, and from Dr. Offutt's letter today, that the medical issues, while potentially serious, are not currently serious enough to either require his hospitalization, or convince him to stop engaging in his broadcasts. Mr. Jones cannot unilaterally decide to continue to engage in his broadcasts, but refuse to participate in a deposition. The motion is denied. Of course, if, as Dr. Offutt indicates, he develops escalating symptoms such that he is hospitalized, that change in circumstance would excuse his attendance at the court ordered deposition.

DN 744.10, 3/23/22 Order.

Mr. Jones did not attend his March 24 deposition. Ex. D, 3/24/22 Dep. Tr. A. Jones – Not Appearing at 4:18-21, 6:24-25; 7:1-3 (Attorney Mattei, noting Mr. Jones's absence; Attorney Pattis confirming Mr. Jones "will not be appearing here today").

I. CIVIL CONTEMPT

"Where ... the dispute is between private litigants and the purpose for judicial intervention is remedial, then the contempt is civil, and any sanctions imposed by the judicial authority shall be coercive and nonpunitive, including fines, to ensure compliance and compensate the complainant for losses." Prac. Bk. § 1-21A.

"The court's authority to impose civil contempt penalties arises not from statutory provisions but from the common law. The penalties which may be imposed, therefore, arise from the inherent power of the court to coerce compliance with its orders. In Connecticut, the court has the authority in civil contempt to impose on the contemnor either incarceration or a fine or both." *Papa v. New Haven Federation of Teachers,* 186 Conn. 725, 737-38 (1982); *Financial Holdings, LLC v. Lyons,* 129 Conn. App. 380, 385 (2011) ("Sanctions for civil contempt may be either a fine or imprisonment; the fine may be remedial or it may be the means of coercing compliance with the court's order and compensating the complainant for losses sustained.")

"Judicial sanctions in civil contempt proceedings may, in a proper case, be employed for either or both of two purposes: to coerce the defendant into compliance with the court's order and to compensate the complainant for losses sustained." *DeMartino v. Monroe Little League, Inc.,* 192 Conn. 271, 278-79 (1984). In civil contempt the [punishment] must be conditional and coercive and may not be absolute ... To effectuate the purpose of civil contempt, the contemnor should be able to obtain release from the sanction imposed by the court by compliance with the judicial decree." *Connolly v. Connolly,* 191 Conn. 468, 482 (1983). It is important that the contempt order clearly define how the contemnor may purge the contempt: "[I]n civil contempt proceedings, the contemnor must be in a position to purge himself."

Mays v. Mays, 193 Conn. 261, 266 (1984). Thus a coercive penalty imposed under the contempt power should "specify" what the contemnor "must do in order to purge himself of the contempt." *Id.*

"The evaluation of civil contempt penalties depends to a great extent on whether the penalties are considered at the time they are first conditionally imposed for the purpose of coercing compliance or are considered after the contempt has been purged and the penalties are finalized." *Papa*, 186 Conn. at 737-38. "When the penalties are first imposed, the propriety of the court's exercise of its discretion turns on the reasonableness of the amount of the coercion that the court deems necessary, keeping in mind the court's ultimate power to reduce the penalties once the contempt has been purged." *Id.*

II. RELIEF REQUESTED

The Court must impose penalties to coerce Mr. Jones to attend and complete his deposition in Connecticut immediately, including findings of fact and exclusions of evidence, which will become permanent if Mr. Jones does not sit for deposition by April 15; escalating fines, which may be purged when Mr. Jones sits for deposition; and an order of incarceration or capias. It is appropriate to impose these penalties simultaneously, *see Papa*, 186 Conn. at 738 (trial court did not abuse its discretion in ordering simultaneous incarceration and fines), and the circumstances warrant doing so here.[5]

[5] While affirming simultaneous incarceration and fines in *Papa*, the Supreme Court observed that "it may be a better practice … for the court to impose civil contempt penalties in increasingly harsh stages so as to increase the pressure on the contemnor." *Id.* Given how little time is left for fact discovery in the scheduling order, and Mr. Jones's clear intent to delay trial as long as possible, simultaneous penalties are necessary and appropriate here.

The plaintiffs also request fees and costs incurred for travel expenses wasted and time lost due to Mr. Jones's non-appearance, such scheduling accommodations as their counsel may require due to the time wasted by Mr. Jones's willful refusal to attend his deposition, and any other penalties or relief that the Court deems appropriate.

A. FINDING OF CIVIL CONTEMPT

Civil contempt is proven by clear and convincing evidence. *Brody v. Brody*, 315 Conn. 300, 319 (2015). Mr. Jones's contempt of court is proven well beyond that standard. The Court gave notice that failure to attend the March 24 deposition would result in a finding of contempt. Ex. A, 3/23/22 Hrg. Tr. at 30:26-27; 31:1-2; DN 735, 3/23/22 Order. Mr. Jones did not attend the deposition. Ex. D, 3/24/22 Dep. Tr. A. Jones – Not Appearing at 4:18-21, 6:24-25; 7:1-3. Mr. Jones is in contempt of court, and the Court should so find. The Court should further order that the contempt may be purged when Mr. Jones has completed his deposition, to be held at the offices of Koskoff, Koskoff & Bieder PC, 350 Fairfield Ave., Bridgeport, Connecticut.

B. FINDINGS OF ESTABLISHED FACTS AND PRECLUSIONS OF EVIDENCE, WHICH WILL BECOME FINAL IF MR. JONES DOES NOT COMPLETE HIS DEPOSITION BY APRIL 15, 2022

In order to coerce Mr. Jones to attend his deposition, the Court should issue an order alerting Mr. Jones that it will order certain facts established and exclude certain evidence, and that these orders and will become permanent if Mr. Jones does not appear for deposition by April 15 at the offices of Koskoff, Koskoff & Bieder in Bridgeport, Connecticut.[6]

[6] Although we had previously accommodated Mr. Jones by agreeing to hold his deposition in Texas, he used that accommodation to waste counsel's time to his own advantage. If Mr. Jones is allowed to be deposed in Austin, there is nothing to stop him from doing that again – and absolutely no reason to believe any representation he may make to the contrary. Mr. Jones must be compelled to come to Connecticut for deposition. *See Sansone v. Haselden*, 1990 WL 271143 (Conn. Super. Ct. Apr. 18, 1990) (Berdon, J.) (court may exercise its discretion to order an out-of-state defendant to appear in Connecticut); *Antonios v. Farmers Ins.*, No. 117917, 1996 WL

Practice Book § 13-14, subsections (3) and (4) provide for the establishment of facts and the exclusion of evidence when a defendant engages in discovery misconduct:

> (3) The entry of an order that the matters regarding which the discovery was sought or other designated facts shall be taken to be established for the purposes of the action in accordance with the claim of the party obtaining the order;
> (4) The entry of an order prohibiting the party who has failed to comply from introducing designated matters in evidence….

Prac. Bk. § 13-14.

If Mr. Jones does not sit for deposition, it will be necessary for the Court to find multiple facts established and to preclude Mr. Jones from offering a range of evidence. The most significant directed factual findings will concern Mr. Jones' subjective intent, including his motives for broadcasting lies about the plaintiffs and the Sandy Hook shooting, his intent to harm the targets of those lies, and his malicious subjective intent.[7] The Court would be required to concurrently preclude Mr. Jones from offering evidence contradicting those findings.

Ensuring these directed factual findings are appropriately framed will take more time than the Court has allotted under this briefing schedule, both because these findings and exclusions will be a dominant feature of the hearing in damages, if they become permanent, and because of the range of issues Mr Jones's deposition proposed to cover. The plaintiffs will

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92207 (Conn. Super. Ct. Feb. 15, 1996) (Pellegrino, J.); Prac. Bk. § 13-29(c)(2) (non-resident defendant "may be compelled" to give a deposition "at any place within thirty miles of the defendant's residence or within the county of his or her residence *or at such other place as is fixed by order of the judicial authority*.") (emphasis supplied). For the Court's convenience, unpublished Superior Court cases are attached in alphabetical order as Exhibit E.

[7] The imposition of such sanctions – which would effectively direct findings on punitive damages for the plaintiffs – is *not* what the plaintiffs want. What the plaintiffs want is for a jury to hear Mr. Jones's testimony and make its own determination of that issue, and for the Court then to make its own punitives findings based on that evidence. Nonetheless, such sanctions are the only path open to the plaintiffs and the Court at this point.

supplement this Motion with proposed findings of established fact, reserving the right to seek further findings of established fact as may be necessary. The plaintiffs request that the Court order those facts established and related evidence precluded, such order to be vacated if Mr. Jones purges his contempt by April 15.[8]

C. ESCALATING FINE

The plaintiffs request that the Court order a conditional fine, to be paid to the court clerks' office. The fine should increase as time passes. The plaintiffs request that the fine be set at $25,000 per day, beginning two days after the issuance of the Court's order on this Motion, and continuing for seven days thereafter; then escalating to $50,000 per day. The fine would be due every day until Mr. Jones completes his deposition, except that it should be suspended on the dates Mr. Jones is being deposed. As this fine is conditional, some or all of these amounts could be returned to Mr. Jones once he completes his deposition.[9]

For a coercive fine such as this, the consideration that informs the Court's exercise of its discretion is "the reasonableness of the amount of the coercion that the court deems necessary, keeping in mind the court's ultimate power to reduce the penalties once the contempt has been purged." *Papa* v. *New Haven Federation of Teachers*, 186 Conn. 725, 738 (1982). Applied to the

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[8] For an example of a case entering a conditional directed finding, *see Martucci v. Martucci*, 2011 WL 590736, at *5-6 (Conn. Super. Jan. 20, 2001) (Tierney, J.) (where defendant refused to provide tax returns, finding that the defendant's annual income was $896,835 and this amount would be "used by this court and future courts as the defendant's current annual income for all purposes," but that this order could be modified if the defendant produced the returns as ordered within a short time frame).

[9] An example of a case applying a graduated conditional fine, such as the one described above, is *Abandoned Angels Cocker Spaniel Rescue, Inc. v. Baity*, 2020 WL 6121354, at *3 (Conn. Super. Sept. 21, 2021) (Krumeich, JTR) (ordering conditional fines to be increased over time as long as non-compliance continued). An example of a case imposing a significant fine is *Papa v. New Haven Fed'n of Teachers,* 186 Conn. 725, 729 (1982), in which a $5,000 per day fine was imposed.

circumstances presently before the Court, the test requires the imposition of heavy fines. Lesser amounts are unlikely to cause Mr. Jones to appear.

The plaintiffs are also greatly prejudiced by every day that Mr. Jones delays his deposition – but the result he hopes for, a postponement of the trial date, would be equally prejudicial to the plaintiffs. For this reason, the initial fine amount should be substantial, should increase in significant increments, and should be required to be paid daily.

D. CONDITIONAL ORDER OF INCARCERATION

"In Connecticut, the court has the authority in civil contempt to impose on the contemnor either incarceration or a fine or both." *Woodbury Knoll, LLC v. Shipman & Goodwin, LLP*, 305 Conn. 750, 766 n.12 (2012). "Sanctions for civil contempt may be … imprisonment." *Financial Holdings, LLC v. Lyons,* 129 Conn. App. 380, 385 (2011). "[A] trial court has the power even to incarcerate contemnors in civil contempt cases until they purge themselves…." *Martocchio v. Savoir*, 130 Conn. App. 626, 631, *cert. denied*, 303 Conn. 901 (2011) (quoting *Johnson v. Johnson,* 111 Conn. App. 413, 427 (2008). The plaintiffs request that the Court order that Mr. Jones be taken into custody and incarcerated until his deposition is completed.

It is the plaintiffs' understanding that the Texas courts likely have the power to execute such an order. Tex. R. Civ. P. 201.2; *In re Seavall*, No. 03-13-00205-CV, 2013 WL 3013872, at *2 (Tex. App. June 11, 2013) ("[R]ule 201.2 authorizes Texas courts to enforce foreign discovery orders."); *see also Ex parte Durham*, 921 S.W.2d 482 (Tex. App. 1996) (Texas courts may hold a party in civil or criminal contempt for failure to comply with discovery orders.); *Ex parte Barnett*, 594 S.W.2d 805, 808 (Tex. Civ. App. 1980) ("there is no inherent or constitutional limitation on the power of a court to use its contempt power to enforce the orders of another court"); *see, e.g. Guercia v. Guercia*, 239 S.W.2d 169 (Tex. Civ. App. 1951) (under its equitable

powers, Texas court may use contempt to enforce order issued by Ohio court). Because the enforcement of such an order would take time, the plaintiffs request that the Court order incarceration in combination with other penalties.

E. ADDITIONAL ORDERS NECESSARY TO REMEDY PREJUDICE TO THE PLAINTIFFS

The plaintiffs further request that Mr. Jones is to pay to the plaintiffs' fees and costs incurred in connection with the deposition that Mr. Jones failed to attend, including, but not limited to time expended by plaintiffs' counsel and staff in the preparation, arrangement and travel to/from the deposition, lodging, transportation, and deposition costs associated with the court reporter, videographer and venue. The plaintiffs will compile these expenses and submit them to the Court as a supplemental filing.

The plaintiffs are still determining what scheduling accommodations their counsel may require due to the time wasted by Mr. Jones's willful refusal to attend his deposition. To the extent the plaintiffs require such accommodations, they should be granted without affording Mr. Jones any extension of the trial date.

III. CONCLUSION

As our Supreme Court recognized in *Rizzuto v. Davidson Ladders, Inc.*, 280 Conn. 225, 239-41 (2006), sanctions are a poor substitute for evidence, and the plaintiff who is awarded sanctions in lieu of evidence is often still prejudiced. *See id.* (stating that "most of [the 13-14] sanctions are of no use to a plaintiff who is unable to fulfill his or her burden of production as a result of a defendant's intentional spoliation of evidence"). There is no substitute for Mr. Jones's testimony under oath. The plaintiffs request that the Court issue any and all orders reasonably likely to coerce Mr. Jones to attend his deposition, including all the orders outlined above and any additional orders that the Court deems appropriate. The plaintiffs further request that the

Court make all orders necessary to remedy the prejudice caused by Mr. Jones's willful contempt.

THE PLAINTIFFS,

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CERTIFICATION

I certify that a copy of the above was or will immediately be mailed or delivered electronically or nonelectronically on this date to all counsel and self-represented parties of record and that written consent for electronic delivery was received from all counsel and self-represented parties of record who were or will immediately be electronically served.

For Alex Emric Jones, Infowars, LLC, Free Speech Systems, LLC, Infowars Health, LLC and Prison Planet TV, LLC:
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EXHIBIT A

UWY-X06-CV18-6046436-S	:	SUPERIOR COURT
ERICA LAFFERTY, ET ALS.,	:	COMPLEX LITIGATION
v.	:	AT WATERBURY, CONNECTICUT
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WILLIAM SHERLACH, ET AL.,	:	COMPLEX LITIGATION
v.	:	AT WATERBURY, CONNECTICUT
ALEX EMRIC JONES, ET ALS.	:	MARCH 23, 2022

BEFORE THE HONORABLE BARBARA N. BELLIS, JUDGE

A P P E A R A N C E S :

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Transcribed By:
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Court Recording Monitor
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evidence to evaluate. I -- I will say that in my opinion, I was deceived yesterday, not intentionally by Attorney Smith and I made that clear yesterday, but I was deceived by the evidence and the argument Mr. Jones made about his need not to go to the deposition because he was remaining at home under Court (sic) supervision and I will say that only because Attorney Mattei pointed out that he was -- that Mr. Jones was broadcasting live the day before the hearing and the day of the hearing, did that -- that was the only way it would have ever come to the Court's attention, which is why I asked Attorney Smith for clarification.

So I simply cannot accept argument of counsel without credible, genuine, and reasonable proof and I don't have anything here. So are you looking for an opportunity to file, even ex parte, some medical record that you want the Court to consider?

ATTY. PATTIS: Yes. And may -- May -- If I can address the candor issue, Judge? I didn't mean to distract you. I got a re -- report of how the thing went when I was between flights last night and I don't think any lawyer wants to hear a suggestion that he or his partner were less than candid with the Court and Mr. Smith may have taken your words to heart. They were devastating to our firm and we began to evaluate whether we had conflicts because if

anticipate ruling?

THE COURT: I'm going -- I'm going -- I'm going to talk to Mr. Ferraro about how we're going to do this. I'm going to be reviewing everything at 3:30 and as soon as I -- you know, no later than five, I'll either be reviewing an in-camera document or not and Mr. Ferraro hopefully, I haven't spoken to him about this yet, but hopefully he can process the orders remotely from home tonight and he has everyone's email so he can email everyone the order as well so that you'll -- listen, I don't know how much you'll be filing. If it's 60 pages and I have to do significant research, it's going to be much later tonight, but if it's not that complicated an issue and the briefing isn't that tricky, then you'll get something earlier. If, for example, Attorney Pattis tells Mr. Ferraro at 4 o'clock I'm not going to submit anything or he has already submitted something by 4 o'clock, I may very well by 4:15 be able to enter the orders and -- and Mr. Ferraro will email you and will also get those orders processed so they'll be on the website.

But I will say this: Because there is no other evidence -- proper evidence before me and because I don't need briefing on the issue of whether he should appear for his deposition, I am going to order him to appear for his deposition tomorrow ordered as part of

the official court file, so that order will be in writing and it's also on the record now. And that -- Of course, if there is evidence that's submitted that persuades the Court that it would be dangerous to his health for him to attend the deposition, then that order may change, but right now, absent any amendment to the order, he is ordered to produce himself for the deposition tomorrow.

All right. Anything further from anyone at this point?

ATTY. PATTIS: Nothing.

ATTY. MATTEI: Nothing. Thank you.

ATTY. CERAME: No, Your Honor.

THE COURT: All right. Thank you. We're adjourned.

(The matter concluded.)

* * *

UWY-X06-CV18-6046436-S	:	SUPERIOR COURT
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v.	:	AT WATERBURY, CONNECTICUT
ALEX EMRIC JONES, ET ALS.	:	MARCH 23, 2022

C E R T I F I C A T I O N

I hereby certify the foregoing pages are a true and correct transcription of the audio recording of the above-referenced case, heard in Superior Court, Judicial District of Waterbury at Waterbury, Connecticut, before the Honorable Barbara N. Bellis, Judge, on the 23rd day of March, 2022.

Dated this 24th day of March, 2022 in Waterbury, Connecticut.

Jocelyne Greguoli
Court Recording Monitor

EXHIBIT B

NO. X06-UWY-CV-18-6046436-S	**:**	**SUPERIOR COURT**
ERICA LAFFERTY, ET AL.	**:**	**COMPLEX LITIGATION DOCKET**
V.	**:**	**AT WATERBURY**
ALEX EMRIC JONES, ET AL.	**:**	**MARCH 11, 2022**

NO. X06-UWY-CV-18-6046437-S	**:**	**SUPERIOR COURT**
WILLIAM SHERLACH	**:**	**COMPLEX LITIGATION DOCKET**
V.	**:**	**AT WATERBURY**
ALEX EMRIC JONES, ET AL.	**:**	**MARCH 11, 2022**

NO. X06-UWY-CV-18-6046438-S	**:**	**SUPERIOR COURT**
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ALEX EMRIC JONES, ET AL.	**:**	**MARCH 11, 2022**

RE-NOTICE OF VIDEOTAPED DEPOSITION

PLEASE TAKE NOTICE that the Plaintiffs in the above-captioned matter will take the videotaped deposition of **ALEX EMRIC JONES** on **Wedsnday, March 23, 2022 at 10:00 a.m**. **Eastern Time (9:00 a.m. Central Time) and continuing to Thursday, March 24, 2022** and until such deposition is complete, to be held in the Tesla Fiber Room at the offices of fibercove, 1700 South Lamar Boulevard, Suite 338, Austin, TX 78704, with remote videoconference available for participating counsel, before a notary public or other competent authority. The Plaintiffs also request that **ALEX EMRIC JONES** produce the items, documents, and information described in the Schedule A attached hereto.

THE PLAINTIFFS,

By /**s**/ *Christopher M. Mattei, Esq.*

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CERTIFICATION

This is to certify that a copy of the foregoing has been emailed and/or mailed on this day to all counsel and *pro se* appearances as follows:

For Alex Emric Jones, Infowars, LLC, Free Speech Systems, LLC, Infowars Health, LLC and Prison Planet TV, LLC:
Norman A. Pattis, Esq.
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For Genesis Communications Network, Inc.
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/s/ *Christopher M. Mattei, Esq.*
CHRISTOPHER M. MATTEI
ALINOR C. STERLING
MATTHEW S. BLUMENTHAL

Schedule A

Definitions

Please be advised that these Requests for Production use and incorporate the definitions set forth in Conn. Practice Book § 13-1.

In addition, for the purposes of these Requests for Production only,

"Sandy Hook Shooting" is defined as: the shooting that took place at Sandy Hook Elementary School in the town of Newtown, Connecticut on December 14, 2012.

"The plaintiffs in this lawsuit" is defined as: Jacqueline Barden, Mark Barden, Nicole Hockley, Ian Hockley, Francine Wheeler, David Wheeler, Jennifer Hensel, Jeremy Richman, Donna Soto, Carlee Soto-Parisi, Carlos M. Soto, Jillian Soto, Erica Lafferty, William Sherlach, and Robert Parker.

"Sandy Hook Hoax Theory" is defined as: Any theory that the Sandy Hook Shooting did not happen as is generally accepted, including that it was a government conspiracy, scripted, included so-called "crisis actors," that the Sandy Hook Victims did not die, and bases for such theories.

"This Lawsuit" is defined as: *Erica Lafferty, et al v. Alex Jones, et al*, UWY-CV18-6046436-S; *William Sherlach v. Alex Jones, et al*, UWY-CV18-6046437-S, and *William Sherlach, et al v. Jones, et al*, UWY-CV18-6046438-S.

"**The Texas Lawsuits**" is defined as: Neil Heslin v. Alex E. Jones, et al, Cause No. D-1-GN-18-001835; Leonard Pozner and Veroniqe de la Rosa v. Alex E. Jones, et al, Cause No. D-1-GN-18-001842; Scarlett Lewis v. Alex E. Jones, et al, Cause No. D-1-GN-18-006623, Marcel Fontaine v. Alex E. Jones, et al, Cause No. D-1-GN-18-001605; Brennan M. Gilmore v. Alexander E. Jones, et al., Case No. 18-00017 (D. W.Va.).

Unless otherwise specified, the time frame for these discovery requests is **December 14, 2012 through and including March 23, 2022**.

Schedule A

1. Any and all non-privileged documents and communications concerning any information that the deponent relied upon and/or referenced in connection with any on-air statement he made concerning the Sandy Hook Shooting, the Sandy Hook Hoax Theory, and/or the plaintiffs in this lawsuit.

a. Any and all non-privileged documents and communications concerning the source(s) of any such information.

2. Any and all non-privileged communications to or from Wolfgang Halbig, including letters, memoranda, emails, text messages, sms messages, instant messages sent and/or received over any social media platform, or other electronic communications;

3. Any and all non-privileged communications to or from Daniel Bidondi, including letters, memoranda, emails, text messages, sms messages, instant messages sent and/or received over any social media platform, or other electronic communications;

4. Any and all non-privileged communications to or from Joseph Rogan, including letters, memoranda, emails, text messages, sms messages, instant messages sent and/or received over any social media platform, or other electronic communications, concerning the Sandy Hook Shooting, the Sandy Hook Hoax Theory, the plaintiffs in this lawsuit, and/or any appearance by the deponent on the Joe Rogan Experience podcast.

5. Any and all non-privileged communications to or from David Jones, Robert Dew, Melinda Flores, Lydia Zapata-Hernandez, Anthony Gucciardi, Adan Salazar, Nico Acosta, Cristopher Daniels, Timothy Fruge, Blake Roddy, Louis Sertucche, Buckley Hamman, Michael Zimmerman and/or Owen Shroyer, including letters, memoranda, emails, text messages, sms messages, instant messages sent and/or received over any social media platform, or other electronic communications concerning this Lawsuit and/or the Texas Lawsuits.

Schedule A

6. Any and all contracts, memoranda of understanding, agreements, certificates of debt, and/or notes concerning the relationship between any of the following entities: Free Speech Systems, LLC; PQPR Holdings Limited, LLC; JLJR Holdings, LLC; PLJR Holdings, LLC.

7. Any and all contracts, memoranda of understanding and agreements between the deponent and Youngevity International Corporation or any subsidiary thereof.

8. For the period November 2016 through the present, any and all transcripts of any program aired on Infowars.com, including closed captioning transcripts, in which the terms "Sandy Hook" or "Newtown" appear.

9. Documents sufficient to identify every cellular telephone number utilized by you from December 14, 2012 through February 23, 2022.

10. Complete transaction histories, including, but not limited to, dates, amounts, input/output addresses, fees, and transaction numbers, from any cryptocurrency excanges, investment firms, brokeratges, and/or cryptocurrency management software, including virtual wallet software, mobill applications, desktop applications, and/or web-based systems.

11. Records of deposits of cryptocurrency into fiat currency, including, but not limited to, method of exchange, location of exchange, dates, amounts, and input/output addresses, transaction numbers, and fees paid.

EXHIBIT C

NO. X06-UWY-CV-18-6046436-S	:	SUPERIOR COURT
ERICA LAFFERTY, ET AL.	:	COMPLEX LITIGATION DOCKET
V.	:	AT WATERBURY
ALEX EMRIC JONES, ET AL	:	

NO. X06-UWY-CV-18-6046437-S	:	SUPERIOR COURT
WILLIAM SHERLACH	:	COMPLEX LITIGATION DOCKET
V.	:	AT WATERBURY
ALEX EMRIC JONES, ET AL	:	

NO. X06-UWY-CV-18-6046438-S	:	SUPERIOR COURT
WILLIAM SHERLACH, ET AL.	:	COMPLEX LITIGATION DOCKET
V.	:	AT WATERBURY
ALEX EMRIC JONES, ET AL	:	

CERTIFICATE OF NONAPPEARANCE
FOR THE ORAL DEPOSITION OF ALEX EMRIC JONES
MARCH 23, 2022

I, Gabriela Silva, Certified Shorthand Reporter in and for the State of Texas, certify:

That I appeared at Homewood Suites by Hilton Austin South, 4143 Governor's Row, Board Room, Austin, Texas on the 23rd day of March, 2022, to report the oral deposition of ALEX EMRIC JONES, pursuant to the attached Memorandum, scheduled for 9:00 a.m.

That at 9:03 a.m., the witness was not present. Present for the deposition in-person were CHRISTOPHER M. MATTEI, MATTHEW S. BLUMENTHAL, and via Zoom were ALINOR C. STERLING and COLIN ANTAYA, Attorneys for Plaintiffs; NORMAN PATTIS, Attorney for Defendants; and via Zoom, MARIO KENNETH CERAME, Attorney for Genesis Communications Network, Inc.

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CHRISTOPHER M. MATTEI, ESQ.
ALINOR C. STERLING, ESQ. (Appearing remotely)
MATT BLUMENTHAL, ESQ.
COLIN ANTAYA, ESQ. (Appearing remotely)

ATTORNEYS FOR THE DEFENDANTS:
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NORMAN A. PATTIS, ESQ.

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MARIO CERAME, ESQ. (Appearing remotely)

motion -- an objection to the request for production which Judge Bellis overruled except as to the last two items in Schedule A.

Earlier this week, Mr. Jones filed a Motion for a Protective Order seeking permission from the Court not to appear for his deposition. That Motion for Protective Order was opposed by my office by written memorandum and Judge Bellis held a hearing on the Motion for Protective Order yesterday at which time she granted Mr. Jones' request to submit a ex parte for in-camera review a letter purporting to be from a physician.

Judge Bellis reviewed that letter and concluded that there was no credible evidence that was submitted by Mr. Jones upon which she could find that he had met his burden for the issuance of a protective order and ordered Mr. Jones to appear here for a deposition this morning. I confirmed with Counsel yesterday the time and location of the deposition. I had conversation with Counsel last night and then this morning.

I am informed by Counsel that Mr. Jones does not intend to appear for his deposition today, and I'll let Counsel put on the record anything he sees fit to put on. My intention is for us to remain on the record and -- at least for a reasonable period of time in the

becomes necessary or seeks counsel himself, I can't say.

That's not my place to advise him. But as to remaining here, I'll remain as long as Attorney Mattei likes, but I think it is abundantly clear to me that Mr. Jones has no intention to appear here today regardless of how long we sit.

MR. MATTEI: Attorney Cerame, is there anything you'd like to add at this point?

MR. CERAME: Sorry. Did you say Cerame? It sounded a little blocked.

MR. MATTEI: Mario, yes. Attorney Cerame?

MR. CERAME: Yes. I mean, as much as I know me as and as much as I think was yesterday where I think Chris looked at the streaming -- I could see, but I imagine it was prerecorded. Recorded -- imagine -- that's all I wanted to add.

COURT REPORTER: I can't hear him at all.

MR. MATTEI: Yeah. I -- the court reporter, Attorney Cerame, was having difficulty hearing you. Let me see if I can summarize what you said and you can tell me whether it was accurate or not.

I believe what Attorney Cerame indicated was that he reviewed some of what he believes to have been the footage from Mr. Jones' show yesterday and was relaying that at least some of it was prerecorded. Is

CERTIFICATE

I further certify that I am neither employed nor related to any attorney or party in this matter and have no interest, financial or otherwise, in its outcome.

The cost of the Certificate of Nonappearance is $_____.

Given under my hand and seal of office on this 23rd day of March, 2022.

Gabriela S. Silva, Texas CSR, RPR, CRR, RMR
Expiration Date: 01-31-23
U.S. Legal Support
Firm Registration No.: 342
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Houston, Texas 77060
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EXHIBIT D

NO. X06-UWY-CV-18-6046436-S : SUPERIOR COURT

ERICA LAFFERTY, ET AL. : COMPLEX LITIGATION DOCKET

V. : AT WATERBURY

ALEX EMRIC JONES, ET AL

NO. X06-UWY-CV-18-6046437-S : SUPERIOR COURT

WILLIAM SHERLACH : COMPLEX LITIGATION DOCKET

V. : AT WATERBURY

ALEX EMRIC JONES, ET AL

NO. X06-UWY-CV-18-6046438-S : SUPERIOR COURT

WILLIAM SHERLACH, ET AL. : COMPLEX LITIGATION DOCKET

V. : AT WATERBURY

ALEX EMRIC JONES, ET AL

CERTIFICATE OF NONAPPEARANCE
FOR THE ORAL DEPOSITION OF ALEX EMRIC JONES
MARCH 24, 2022

I, Gabriela Silva, Certified Shorthand Reporter in and for the State of Texas, certify:

That I appeared at Homewood Suites by Hilton Austin South, 4143 Governor's Row, Board Room, Austin, Texas on the 24th day of March, 2022, to report the oral deposition of ALEX EMRIC JONES, pursuant to the attached Memorandum, scheduled for 9:00 a.m.

That at 9:01 a.m., the witness was not present. Present for the deposition in-person were CHRISTOPHER M. MATTEI, MATTHEW S. BLUMENTHAL, Attorneys for Plaintiffs; NORMAN PATTIS, Attorney for Defendants; and via Zoom, MARIO KENNETH CERAME, Attorney for Genesis Communications Network, Inc.

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CHRISTOPHER M. MATTEI, ESQ.
MATT BLUMENTHAL, ESQ.

ATTORNEYS FOR THE DEFENDANTS:
FOR ALEX EMRIC JONES, INFOWARS, LLC, FREE SPEECH SYSTEMS, LLC, INFOWARS HEALTH, LLC and PRISON PLANET TV, LLC:
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NORMAN A. PATTIS, ESQ.

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MARIO CERAME, ESQ. (Appearing remotely)

P R O C E E D I N G S

(On the record at 9:01 a.m.)

MR. MATTEI: This is Chris Mattei on behalf of the plaintiffs in the matter of Lafferty, et al and the companion cases against Alex Jones and additional defendants. We're here on Friday (sic), March 24th.

MR. PATTIS: Thursday.

MR. MATTEI: I'm sorry, Thursday, thank you, March 24th. It's 9:02 a.m. Central for the deposition of Alex Jones. Mr. Jones was originally scheduled to appear yesterday. He did not appear. Mr. Jones subsequently filed an amended Motion for Protective Order seeking to be excused from his appearance here today.

The Court denied that motion at docket 744.10 yesterday evening. So we are gathered here for Mr. Jones' deposition. He has not appeared yet again. I understand from Attorney Pattis, who will make remarks after me, that Mr. Jones is not going to appear today. And so after Attorney Pattis makes any comments he wishes to make, Attorney Cerame makes any comments he wishes to make I don't think that we'll need to stay as we did yesterday to see if he arrives, but I'll attest

are pending to assess his status. And I redacted the type of status that is.

I have asked him to avoid too much stress until we get the results from the blood tests this morning. I also gave him ER precautions if he develops escalating systems. And then the doctor concludes, As a result of these findings, I am advising him not to attend court proceedings for now.

You know, I -- it's my understanding that pending the results of these certain tests, he may or may not be hospitalized today, but Mr. Jones is not -- is mindful of the Court's order, but feels very much in the position of -- and taking by that name, he's got conflicting imperatives and he's choosing to adhere to the voice of his physician who has his physical welfare, health and life in her hands.

So I offer plaintiff's exhibit -- or excuse me -- Defendants' Exhibit 1, the affidavit of Dr. Benjamin Marble who we discussed in our pleadings yesterday and Jones Exhibit Number 2, the letter notarized from Dr. Amy Offutt as exhibits to this deposition.

(Exhibit Numbers 1 and 2 were marked.)

MR. PATTIS: And I can confirm after speaking with Mr. Jones moments before we went on the record that

he will not be appearing here today. And I join Mr. Mattei in closing -- in the request to close the deposition on futility grounds.

MR. MATTEI: Attorney Cerame?

MR. CERAME: I have nothing more to offer.

MR. MATTEI: Okay. I would just ask that Attorney Pattis and I, prior to going on the record, had a conversation about scheduling in this case of additional depositions. We had anticipated after the deposition of Brittany Paz, the need for a short extension of the fact discovery deadline in order to accommodate the remainder of her deposition along with the depositions that had previously been kept open, Owen Shroyer, Kit Daniels and Josh Owens.

In light of the circumstances surrounding Mr. Jones' deposition, from the plaintiff's perspective at least, additional time will be required to secure his testimony or at least for us to attempt to secure his testimony. And in addition, Rob Dew, who had agreed through Counsel to appear for deposition tomorrow, has been, as I understand it, in conversation with Counsel, for a new date in light of the inability of the plaintiffs to take Mr. Jones' deposition this week, which is a circumstance we were counting on at the time we had agreed to take Mr. Dew's deposition tomorrow.

CERTIFICATE

I further certify that I am neither employed nor related to any attorney or party in this matter and have no interest, financial or otherwise, in its outcome.

The cost of the Certificate of Nonappearance is $_____.

Given under my hand and seal of office on this 24th day of March, 2022.

_____

Gabriela S. Silva, Texas CSR, RPR, CRR, RMR
Expiration Date: 01-31-23
U.S. Legal Support
Firm Registration No.: 342
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EXHIBIT E

2020 WL 6121354
Only the Westlaw citation is currently available.

UNPUBLISHED OPINION. CHECK COURT RULES BEFORE CITING.

Superior Court of Connecticut,
Judicial District of Stamford-Norwalk at Stamford.

ABANDONED ANGELS COCKER SPANIEL RESCUE, INC.

v.

Cheryl BAITY

FSTCV195021251S
|
September 21, 2020

Opinion

Krumeich, J.T.R.

***1** Abandoned Cocker Spaniel Rescue, Inc. has moved to hold Cheryl Baity ("Baity") in contempt for failure to turn over the subject dog named Lambsy pursuant to Judge Tobin's judgment of replevin filed on December 12, 2019 that "defendant is ordered to return Lambsy to the plaintiff within thirty days ..." Baity appealed and moved to stay the order pending appeal. Plaintiff moved to terminate the stay of execution. By order filed on March 6, 2020, Judge Tobin terminated the stay of execution.[1] Baity has failed to return Lambsy to plaintiff.

In *Town of Wethersfield v. PR Arrow, LLC,* 187 Conn.App. 604, 652 (2019), the Appellate Court recently reaffirmed the factors a court must consider in finding a party in civil contempt:

> "The court has an array of tools available to it to enforce its orders, the most prominent being its contempt power: ... Our law recognizes two broad types of contempt: criminal and civil ... Civil contempt ... is not punitive in nature but intended to coerce future compliance with a court order, and the contemnor should be able to obtain release from the sanction imposed by the court by compliance with the judicial decree ... A civil contempt finding thus permits the court to coerce compliance by imposing a conditional penalty, often in the form of a fine or period of imprisonment, to be lifted if the noncompliant party chooses to obey the court."
>
> "To impose contempt penalties ... the trial court must make a contempt finding, and this requires the court to find that the offending party willfully violated the court's order; failure to comply with an order, alone, will not support a finding of contempt ... Rather, to constitute contempt, a party's conduct must be willful ... Whether a party's violation was willful depends on the circumstances of the particular case and, ultimately, is a factual question committed to the sound discretion of the trial court ... Without a finding of willfulness, a trial court cannot find contempt and, it follows, cannot impose contempt penalties." (Citations omitted.)

The Supreme Court in *Puff v. Puff,* 334 Conn. 341, 364-65 (2020), recently reiterated the shifting burdens imposed on the parties in a contempt proceeding based on disobedience of a court order:

> "Contempt is a disobedience to the rules and orders of a court which has power to punish for such an offense." ... ("[c]ourts have inherent power to coerce compliance -with their orders through appropriate sanctions for contemptuous disobedience of them"). The present case involves allegations of indirect civic contempt. "A refusal to comply with an injunctive decree is an indirect contempt of court because it occurs outside the presence of the trial court." ...
>
> "[C]ivil contempt is committed when a person violates an order of court which requires that person in specific and definite language to do or refrain from doing an act or series of acts." ... (civil contempt may be founded only on clear and unambiguous court order). In part because the contempt remedy is
>
> ***2** "particularly harsh" ... "such punishment should not rest upon implication or conjecture, [and] the language [of the court order] declaring ... rights should be clear, or imposing burdens [should be] specific and unequivocal, so that the parties may not be misled thereby." ...
>
> To constitute contempt, it is not enough that a party has merely violated a court order; the violation must be willful ... "The inability of a party to obey an order of the court; without fault on his part, is a good defense to the charge of contempt ..."

> It is the burden of the party seeking an order of contempt to prove, by clear and convincing evidence, both a clear and unambiguous directive to the alleged contemnor and the alleged contemnor's willful noncompliance with that directive ... If the moving party establishes this twofold prima facie case, the burden of production shifts to the alleged contemnor to provide evidence in support of the defense of an inability to comply with the court order. (Citations omitted.)

"A good faith dispute or legitimate misunderstanding about the mandates of an order may well preclude a finding of willfulness." *Chang v. Chang,* 197 Conn.App. 733, 737 (2020), quoting *Hall v. Hall,* 182 Conn.App. 736, 747 (2018) aff'd 2020 WL 1856087 *8 (2020). The replevin order here was crystal clear: Baity was required to return Lambsy within the designated period. Baity's efforts to stave off execution of the judgment by a motion to stay the order and for various continuances and postjudgment motions were unavailing. Plaintiff has proven by clear and convincing evidence that the replevin order was unambiguous and Baity's failure to obey was a willful violation of the order.

The burden shifted to Baity to produce evidence in support of her defense of inability to comply with the court order. "The inability of the defendant to obey an order of the court, without fault on his part, is a good defense to a charge of contempt." *Tobey v. Tobey,* 165 Conn. 742, 746 (1974). Baity has presented insufficient evidence of her inability to comply with the replevin order. See *Johnson v. Johnson,* 111 Conn.App. 413, 421-22 (2008). The Court does not find credible Baity's testimony that she is unable to return the dog because her mother has bonded with Lambsy but rather finds that keeping Lambsy in New Hampshire is part of Baity's strategy to evade the jurisdiction of this Court to decide replevin of the subject dog and that Baity is at fault for creating the situation she now claims renders her unable to return the dog.[2] Based on the credible evidence presented at the hearing the Court finds that Baity parked Lambsy at her mother's house in New Hampshire as a temporary expedient at the onset of this litigation because of adverse publicity relating to this case and community outrage; Baity later kept the dog there after losing the trial during the pendency of the appeal as a strategy to avoid compliance with the replevin order.[3] "A party to a court proceeding must obey the court's orders unless and until they are modified or rescinded, and may not engage in 'self-help' by disobeying a court order to achieve the party's desired end." *Hall,* 2020 WL 1856087 *8. "Disagreement with a court does not justify disobeying its orders. If it did, savvy litigants would immediately ignore the courts en masse and the wheels of justice would screech to a halt. 'An order of the court must be obeyed until it has been modified or successfully challenged.' " *Christophersen v. Christophersen,* 2014 WL 1814190 *3 (Conn.Super. 2014) (Gilardi, J.), quoting *Fox v. Fox,* 147 Conn.App. 44, 49 (2013).[4] Replevin orders under C.G.S. § 52-515 that are violated willfully, as here, appropriately may be enforced by a contempt order designed to coerce compliance. *Id.*

***3** Having found Baity in contempt for willful failure to obey the replevin order, the Court must now determine the sanction to impose. "Judicial sanctions in civil contempt proceedings may, in a proper case, be employed for either or both of two purposes: to coerce the defendant into compliance with the court's order, and to compensate the complainant for losses sustained." *DeMartino v. Monroe Little League,* 192 Conn. 271, 278 (1984) (citation omitted). Plaintiff has not requested compensation and has not submitted evidence of actual loss necessary to obtain a compensatory sanction. See e.g., *Welsh v. Martinez,* 191 Conn.App. 862, 880-81 (2019).[5] The Court therefore will impose a fine of fifteen dollars ($15.00) per day payable to the court clerk's office commencing on the thirtieth day after entry of this order to coerce compliance with the replevin order. If Baity has not complied with the replevin order and for so long as Baity remains non-compliant, on the 90th day after entry of this order the fine will increase to twenty-five dollars ($25.00) per day and on the 120th day will increase to fifty ($50.00) per day.

All Citations

Not Reported in Atl. Rptr., 2020 WL 6121354

Footnotes

1 In terminating the stay Judge Tobin observed: "defendant's course of action throughout this [case] has shown a pattern that is one of delay."

2 The Court rejects Baity's argument that it lacks jurisdiction over Baity because the dog resides in New Hampshire. The Court has jurisdiction over Baity to enforce its orders. See *CFM of Connecticut Inc. v. Chowdhury,* 239 Conn. 375, 384 (1996).

3 That Lambsy may be leading an idyllic life in New Hampshire with Baity's mother and two other dogs is irrelevant to this proceeding. Compare, *Angave v. Oates,* 90 Conn.App. 427, 430 n.3 (2005); *Animals R Family, Inc. v. Sunrise Assisted Living of Stamford,* 2019 WL 3526443 *2 (Conn.Sup. 2019) [68 Conn. L. Rptr. 827] (Kavanewsky, J.).

4 A contempt motion is not an occasion to re-litigate the underlying order. See *Trufano v. Trufano,* 18 Conn.App. 119, 124 (1989) ("[a] contempt proceeding does not open to reconsideration the legal or factual basis of the order alleged to have been disobeyed and thus become a retrial of the original controversy").

5 Plaintiff indicated in its brief it may seek counsel fees in the future if Baity continues to be noncompliant with the replevin order.

1996 WL 92207

UNPUBLISHED OPINION. CHECK COURT RULES BEFORE CITING.

Superior Court of Connecticut.

Mark ANTONIOS

v.

FARMERS INSURANCE.

No. 117917.

|

Feb. 15, 1996.

MEMORADUM OF DECISION

PELLEGRINO, Judge.

***1** Judge (with first initial, no space for Sullivan, Dorsey, and Walsh): Pellegrino

Opinion Title:MEMORANDUM OF DECISION RE: MOTION FOR PROTECTIVE ORDER (# 124)

On November 15, 1993, the plaintiff, Mark Antonios, filed a single count complaint against the defendant, Farmers Insurance Exchange, seeking uninsured motorist benefits for damages allegedly sustained as a result of an automobile accident that occurred in the state of California. The complaint alleges that the terms of the policy issued by the defendant provide for arbitration of uninsured motorist claims in the county and state of residence of the insured. The complaint further alleges that a demand was made against the defendant and that it has refused to compensate the plaintiff. The plaintiff seeks money damages and an order compelling the defendant to submit to arbitration.

On January 25, 1995, the defendant filed a motion for summary judgment, accompanied by the affidavit of its senior claims representative, Carol L. Nelson. Thereafter, the plaintiff served Nelson with a notice of deposition which directed the defendant to appear in Waterbury for deposition. On July 27, 1994, the defendant filed the operative motion seeking an order that the deposition instead occur in Dublin, Ohio, the state and county of its residence. In response, the plaintiff filed an objection and motion to compel deposition. On August 8, 1995, this court denied the motion for protective order.

On August 21, 1995, the defendant filed a motion to reargue the motion for protective order. The court granted the motion on August 30, 1995, and oral argument was heard on October 30, 1995.

"Any party may be compelled by notice to give a deposition." *Pavlinko v. YaleNew Haven Hospital,* 192 Conn. 138, 143, 470 A.2d 246 (1984); Practice Book § 246. Practice Book § 246 also describes the various locations where depositions may be held and provides in relevant part:
(c) A defendant who is not a resident of this state may be compelled: ...

(2) By notice under Sec. 244(a) to give a deposition at any place within 30 miles of the defendant's residence or within the county of his residence or in *such other place as is fixed by order of the court* ...

(e) In this section, the terms "plaintiff" and "defendant" include officers, directors and managing agents of corporate plaintiffs and corporate defendants or other persons designated under Sec 244(g) as appropriate ...

(Emphasis added.) At the same time, Practice Book § 221 provides in relevant part that "upon motion by a party from whom discovery is sought, and for good cause shown, the court may make any order which justice requires to protect a party from annoyance, embarrassment, oppression, or undue burden or expense ..." "In ruling on a protective order, the court has discretion." *Gomes v. Judd & Puffer,* Superior Court, judicial district of Waterbury, Docket No. 75024 (November 26, 1986) (O'Brien, J., 2 CSCR 64).

***2** Although "a nonresident defendant may usually insist that his deposition be taken only where he resides or does business, these rules have sometimes been relaxed to accommodate special circumstances of the parties." *Kostek v. 477 Corp.,* 30 Conn.Sup. 334, 336, 316 A.2d 423 (1974). "No hard rule should be set down to govern when the court should exercise its discretion to order an out-ofstate defendant to appear in Connecticut or some other place not specifically provided for in 246(c) for a deposition. The court in exercising its discretion must do so in a manner which accommodates the special circumstances of each case." *Sassone v. Hasseldon,* Superior Court, judicial district of New Haven at New Haven, Docket No. 291167 (April 18, 1990) (Berdon, J., 1 Conn.

L. Rptr. 520). In *Sassone,* the court offered the following analytical framework:

Some of the factors [the court] should consider are the financial circumstances of the parties, whether the plaintiff seeking to take the deposition of the out-of-state defendant offers to pay his or her travel and living expenses, whether the defendant was personally served in Connecticut with the writ and complaint while he or she was a resident and thereafter voluntarily moved out of Connecticut, the hardship that travel may impose on a party, the availability of counsel being able to promptly resolve disputes which require a judicial determination if the deposition is taken in the forum, the effectiveness of obtaining the discovery through other means such as written interrogatories or the taking of the defendant's deposition in Connecticut at the commencement of trial, and such other considerations.

Id.

In *Gomes v. Judd & Puffer, supra,* the defendant insurance company moved for a protective order to prevent the plaintiff from requiring its claims adjustor to travel to Connecticut for a deposition. The court, first noting its discretion in the matter, concluded that the status of the deponent as a claims adjustor for the defendant justified holding the deposition in Connecticut. *Id.* In the instant matter, the defendant has chosen this forum to litigate this claim. It is not unreasonable that it should bear the expense of making an employee of its available for a deposition in the forum that it has chosen, especially in view of the fact that it has submitted an affidavit signed by that employee to this court. The court therefore shall deny the defendant's motion for protective order.

All Citations

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2013 WL 3013872
Only the Westlaw citation is currently available.

SEE TX R RAP RULE 47.2 FOR
DESIGNATION AND SIGNING OF OPINIONS.

MEMORANDUM OPINION
Court of Appeals of Texas,
Austin.

In re Stephen J. SEAVALL.

No. 03–13–00205–CV.
|
June 11, 2013.

Original Proceeding from Travis County.

Attorneys and Law Firms

Jeffrey Scott Lowenstein, Dallas, TX, for real party in interest.

George Frederick May, Twomey May PLLC, Houston, TX, for relator.

Jeffery B. Kaiser, Kaiser PC, Houston, TX, for relator.

Benjamin L. Riemer, Dallas, TX, for real party in interest.

Before Justices PURYEAR, PEMBERTON and ROSE.

MEMORANDUM OPINION

DAVID PURYEAR, Justice.

***1** Relator Stephen J. Seavall filed a petition for writ of mandamus attacking the trial court's order requiring him to submit to a deposition and respond to discovery requests made by real party in interest The Cadle Company. Because we agree that the underlying judgment is dormant and cannot be acted upon in Texas, we conditionally grant mandamus relief.

In 1987, Seavall entered into an agreed judgment with Sandia Federal Savings and Loan Association, agreeing to pay $30,000 plus costs, interest, and attorney's fees, for a total of $36,388.12. That judgment was signed by the Second Judicial District Court in New Mexico on July 2, 1987. In 1994, the judgment was acquired by Premier Financial Services, and Premier attempted to domesticate the judgment in Texas in 1997. Seavall responded that limitations had run on the judgment, and Premier non-suited its attempted enforcement action. Cadle later acquired the judgment, and on June 24, 2002, the New Mexico court signed a judgment that essentially extended the 1987 judgment, awarding Cadle $91,504.62. In September 2002, Cadle filed another action in Texas to domesticate the June 2002 judgment, but dismissed it when it "determined the deadline to domesticate the [June 2002] New Mexico Judgment had lapsed." In November 2012, Cadle obtained a Commission, signed by the New Mexico court, that stated that Texas courts should enforce New Mexico's laws and require Seavall to submit to a deposition and produce documents as requested in Cadle's discovery request related to the earlier judgments. Cadle then filed in Travis County a "petition for miscellaneous action for application for discovery," relying on the New Mexico Commission and asking the trial court to require Seavall to submit to a deposition and to answer Cadle's request for production. Seavall filed a motion to quash. The trial court held a hearing on the matter and on March 4, 2013, signed an order denying Seavall's motion to quash, granting Cadle's motion to compel Seavall's deposition, and requiring Seavall to respond to Cadle's requests for production.

In his petition for writ of mandamus, Seavall argues that the trial court abused its discretion in allowing Cadle to maintain an action for post-judgment discovery because the underlying judgment is unenforceable and time-barred under Texas law. We agree.

There is no authority for an appeal from an order related to post-judgment discovery, and generally the only means of reviewing such an order is through mandamus. *See Bahar v. Lyon Fin. Servs.,* 330 S.W.3d 379, 388 (Tex.App.-Austin 2010, pet. denied); *In re Amaya,* 34 S.W.3d 354, 355–56 (Tex.App.-Waco 2001, orig. proceeding); *Parks v. Huffington,* 616 S.W.2d 641, 645 (Tex.Civ.App.-Houston [1st Dist.] 1981, writ ref'd n.r.e.). We will grant mandamus relief only if we determine that the trial court clearly abused its discretion or violated a duty imposed by law and that there is no other adequate remedy by law. *Walker v. Packer,* 827 S.W.2d 833, 842 (Tex.1992); *Johnson v. Fourth Court of Appeals,* 700 S.W.2d 916, 917 (Tex.1985).

***2** Cadle argues that its motion to compel discovery is governed by rule 201.2, which provides that if a court of another state issues a commission requiring a witness's deposition, "the witness may be compelled to appear and testify in the same manner and by the same process used

for taking testimony in a proceeding pending in this State." Tex.R. Civ. P. 201.2. We agree with Cadle that rule 201.2 "authorizes Texas courts to enforce foreign discovery orders," but note that it does not *mandate* that Texas courts do so. *See id* . (witness *may* be compelled to appear for deposition). Further, under rule 621a, entitled, "Discovery and Enforcement of Judgment," a judgment creditor may only seek post-judgment discovery to aid in the enforcement of a judgment that "has not become dormant." *Id.* R. 621a.[1] Finally, section 16.066 of the civil practice and remedies code provides that "[a]n action against a person who has resided in this state for 10 years prior to the action may not be brought on a foreign judgment rendered more than 10 years before the commencement of the action in this state." Tex. Civ. Prac. & Rem.Code § 16.066(b).[2]

Cadle's judgment against Seavall is based on a long-dormant 1987 judgment. *See Lawrence Sys., Inc. v. Superior Feeders, Inc.,* 880 S.W.2d 203, 210–11 (Tex.App.-Amarillo 1994, writ denied) (later memorialization of earlier judgment is not new final judgment; instead, for purposes of limitations, original judgment date controls). Further, even if the 2002 judgment could be considered in isolation from the 1987 judgment, the 2002 judgment became dormant on June 24, 2012, before Cadle filed its motion in Travis County and before the New Mexico court signed the Commission. *See* Tex. Civ. Prac. & Rem.Code § 16.066(b). Therefore, Cadle may not maintain an action against Seavall based on either judgment.

Cadle insists that its discovery proceeding here does not amount to "an action" within the meaning of section 16.066 and instead is "merely a ministerial proceeding." It is true that most "actions" related to foreign judgments involve efforts to enforce or domesticate a foreign judgment. *See, e.g., McCoy v. Knobler,* 260 S.W.3d 179, 181 (Tex.App.-Dallas 2008, no pet.); *Reading & Bates Constr. Co. v. Baker Energy Res. Corp.,* 976 S.W.2d 702, 705 (Tex.App.-Houston [1st Dist.] 1998, pet. denied); *Lawrence Sys.,* 880 S.W.2d at 206. However, "an action" is not defined by section 16.066, and the common usage of the phrase in the legal context is fairly broad. *See Lawrence Sys.,* 880 S.W.2d at 207–08. Although a legal action is usually a proceeding brought in an attempt to obtain a judgment against another party, *see id.* (quoting *Garcia v. Jones,* 147 S.W.2d 925, 926 (Tex.Civ.App.-El Paso 1940, writ dism'd judgm't cor.)), some actions, such as this one, seek to demand one's rights from another or to assist in the enforcement of a prior judgment. *See* Black's Law Dictionary 32–33 (defining "action" as "civil or criminal judicial proceeding"; cited sources include "special proceedings" and "any other proceedings in which rights are determined" within definition), 1572 (defining "suit" as "proceeding by a party or parties against another in a court of law" and "ancillary suit" as action that "grows out of and is auxiliary to another suit and is filed to aid the primary suit, to enforce a prior judgment, or to impeach a prior decree") (9th ed.2009); *see also* Black's Law Dictionary 28 (6th ed.1990) ("action" is "formal complaint within the jurisdiction of a court of law" and is "legal and formal demand of one's right from another person or party made and insisted on in a court of justice," including "all the formal proceedings in a court of justice attendant upon the demand of a right made by a person of another in such court").

***3** Cadle's petition in the trial court is titled "First Amended Petition *for Miscellaneous Action* for Application for Discovery Pursuant to Texas Rule of Civil Procedure 201.2." (Emphasis added.) Although Cadle may not be seeking a judgment in the Texas courts in this proceeding, it is seeking judicial assistance in enforcing what it asserts is its legal right to depose Seavall and obtain discovery documents from him, presumably to assist it in enforcing the dormant judgments. Therefore, Cadle has filed an action against Seavall, relying on dormant judgments, and section 16 .066 provides that such an action may not be brought. *See* Tex. Civ. Prac. & Rem.Code § 16.066(b). The trial court abused its discretion in ordering Seavall to submit to a deposition and to produce documents in response to Cadle's discovery requests. We therefore conditionally grant Seavall's petition for writ of mandamus and direct the trial court to vacate its order requiring Seavall to submit to deposition and to respond to Cadle's discovery requests. The writ will issue only if the trial court does not act in accordance with this opinion.

All Citations

Not Reported in S.W.3d, 2013 WL 3013872

Footnotes

1 *See also* Tex. Civ. Prac. & Rem.Code § 34.001 (if writ of execution is not issued within ten years after judgment's rendition, "the judgment is dormant and execution may not be issued on the judgment unless it is revived").

2 And even if we read rule 201.2 as being in conflict with section 16.066, a statute trumps a rule of procedure in the event of a conflict. *See Johnstone v. State,* 22 S.W.3d 408, 409 (Tex.2000) ("when a rule of procedure conflicts with a statute, the statute prevails unless the rule has been passed subsequent to the statute and repeals the statute as provided by Texas Government Code section 22.004"); *Few v. Charter Oak Fire Ins. Co.,* 463 S.W.2d 424, 425 (Tex.1971) ("when a rule of the court conflicts with a legislative enactment, the rule must yield").

End of Document

2011 WL 590736
Only the Westlaw citation is currently available.

UNPUBLISHED OPINION. CHECK COURT RULES BEFORE CITING.

Superior Court of Connecticut,
Judicial District of Stamford-Norwalk.

Michelle MARTUCCI

v.

Anthony MARTUCCI.

No. FSTFA094016203S.
|
Jan. 20, 2011.

Opinion

KEVIN TIERNEY, J.T.R.

***1** This motion seeks sanctions for the defendant's failure to comply with Plaintiff's First Set of Interrogatories dated December 11, 2009 (# 126.00, Exhibit A) and Plaintiff's Request for Production dated December 11, 2009 (# 126.00, Exhibit A) in this contested dissolution of marriage action. This court has applied the standards and procedures set forth in *Millbrook Owners Association, Inc. v. Hamilton Standard et al.,* 257 Conn. 1 (2001). "In order for a trial court's order of sanctions for violation of a discovery order to withstand scrutiny, three requirements must be met. First, the order to be complied with must be reasonably clear. In this connection, however, we also state that even an order that does not meet this standard may form the basis of a sanction if the record establishes that, not withstanding the lack of such clarity, the party sanctioned in fact understood the trial court's intended meaning ... Second, the record must establish that the order was in fact violated ... Third, the sanction imposed must be proportional to the violation." *Id.* at 17-18.

The court heard testimony, reviewed the documents on file, considered the exhibits offered at the January 11, 2011 hearing at which both parties were represented and appeared and applied the law of discovery. The court makes the following finding of facts and legal conclusions.

The plaintiff, wife, commenced this action seeking a dissolution of marriage against the defendant, husband, returnable April 28, 2009. Trial has been scheduled to commence in July 2011. At the commencement of this litigation both parties resided in Stamford, Connecticut. The plaintiff continues to reside in Stamford and the defendant has since moved to the State of New York.

The defendant filed two financial affidavits with this court; September 21, 2009 (# 113.10) unsealed by court order on September 13, 2010 (# 136.00) and January 11, 2011 (no computer number has yet been assigned). The January 11, 2011 financial affidavit is sealed. The defendant's income comes from his wholly owned business located in Bronx, New York as well as rental and other investment income. The defendant's annual gross income before taxes has been reported by the defendant in documents on file with this court as follows: $426,768 in his unsealed September 21, 2009 financial affidavit (# 113.10); $165,464 in his January 11, 2011 sealed financial affidavit (not yet assigned a computer number by the clerk); $896,835 in a federal income tax return filed by the plaintiff and defendant jointly for 2007 (Exhibit 1, January 11, 2011 hearing), $554,304 in a federal income tax return filed by the defendant married filing separately for 2009 (Exhibit 2, January 11, 2011 hearing) and $157,201 in a Profit and Loss Statement from the defendant's wholly owned equipment rental business located in Bronx, New York for the period of January 1, 2010 through December 8, 2010 (Exhibit 4, January 11, 2011 hearing). The gross income from the defendant's wholly owned equipment rental business, Tucci Equipment Rental Corp., was reported to be $5,755,233.03 for the period of January 1, 2010 through December 8, 2010 (Exhibit 4, January 11, 2011 hearing); $7,043,036 on Form 8903 (Exhibit 2, January 11, 2011 hearing) and $4,942,082 on Form 8903 (Exhibit 1, January 11, 2011 hearing).

***2** The plaintiff claims that she needs the supporting documents and information requested in the December 11, 2009 discovery in order to accurately determine the defendant's gross and net income. She claims that the above listed sources are inconsistent, unreliable and unverified.

The defendant failed to file a financial affidavit within the time required by P.B. Section 25-30. As a result the plaintiff was required to file Plaintiff's Motion to Compel Financial Affidavit, Pendente Lite dated July 10, 2009 (# 108.00). Without the defendant's financial affidavit, the plaintiff was required to assign her Motion for Alimony and Child Support Pendente Lite dated April 29, 2009 (# 103.00/# 104.00) for fifteen separate short calendar dates. On August 17, 2009 the court (Shay, J.) ordered that all financial orders on motions # 103.00/# 104.00 would be retroactive to August

17, 2009 (# 103.00/ # 104.00). On September 8, 2009 the court (Schofield, J.) ordered that the pendente lite alimony and child support motions (# 103.00/# 104.00) be assigned for "the short calendar on 9/21/09. If defendant fails to show he will be ordered to pay $12,000/month in unallocated alimony and child support."

On September 21, 2009, the pendente lite motions # 103.00/ # 104.00 were heard and the defendant filed his financial affidavit (# 113.10). The parties stipulated to pendente lite alimony and child support and the court, Shay, J. so ordered (# 114.10). That order on motions # 103.00/# 104.00 stated in paragraph 4: "Wife shall no longer be an employee of Tucci Equipment, Inc., and shall waive any claim to unemployment as a result hereof."

From a comparison of both financial affidavits submitted to the court for the September 21, 2009 hearing (# 112.10 and # 113.10) and eliminating duplicate references, the court concludes that those financial affidavits disclose that the net joint assets of the parties are over $3,500,000. In addition three assets were disclosed on the plaintiff's affidavit (# 112.10) with no value: Tucci Equipment Rental Corporation, value to be determined, Tucci Company, value to be determined and Martucci Development, value to be determined. The defendant's September 21, 2009 financial affidavit (# 113.10) makes no mention of these three assets. The court notes that one or both of the Tucci entities have gross annual income of between $4,942,082 and $7,043,036 yet neither party submitted any valuation for these business entities.

On September 13, 2010 the court, Wenzel, J., ordered that the defendant "file an updated financial affidavit with the court and plaintiff by September 30, 2010." (# 135.00). The defendant failed to comply with this September 13, 2010 financial affidavit discovery order. The plaintiff filed a Motion for Contempt Re: Failure to Provide Updated Financial Affidavit Pendente Lite dated November 23, 2010 (# 144.00) claiming that the defendant still had not filed an updated financial affidavit. Motion # 144.00 was assigned and partially heard by the undersigned on December 10, 2010. As of December 10, 2010 the defendant had not filed an updated financial affidavit. Not all motions were heard on December 10, 2010 and the hearing was continued to January 11, 2011. At the commencement of the January 11, 2011 hearing the defendant filed an updated financial affidavit with the court and presented a copy to the plaintiff in open court. That January 11, 2011 financial affidavit is sealed in the file.

***3** The defendant did not file any objections to the two December 11, 2009 discovery requests filed by the plaintiff. The defendant filed a Motion for Extension of Time, Pendente Lite dated January 18, 2010 (# 124.00) requesting until February 11, 2010 or thirty days in order to answer and/or object to the two discovery requests. The motion contains a court order "Compliance by March 16, 2010 (Shay, J.)." After February 16, 2010 the defendant filed no objections to either discovery request. On March 17, 2010 the plaintiff filed a Motion for Order Pursuant to P.B. § 13-14 (# 126.00), which requested "that the court enter an order finding the defendant, Anthony Martucci ('defendant') in contempt for violating the Orders of the Court (Shay, J.) dated February 16, 2010 ordering that full compliance with outstanding discovery be made on or before March 16, 2010." The March 17, 2010 Motion for Order Pursuant to P.B. § 13-14 (# 126.00) was heard on March 29, 2010 and the following order entered: "GRANTED and it is further ORDERED: By April 16, 2010 documents to be provided. If not provided $100.00 per diem to the moving party." (Malone, J., # 126.00.) The above order was in Judge Malone's handwriting and was signed by Judge Malone on page 8 of motion # 126.00. The March 29, 2010 transcript on file quotes the following March 29, 2010 order by Judge Malone on motion # 126.00: "You have until April 16th to provide the documents. If not, there will be $100 per diem to the moving party." (Exhibit 3, January 11, 2011 hearing.) Prior to March 29, 2010 the defendant had not provided a single document in discovery.

On April 16, 2010 at 4:00 p m. the defendant delivered to plaintiff's counsel a box of documents. The plaintiff's counsel reviewed the box of documents and wrote a detailed letter with a list of incomplete items dated April 19, 2010. The list of incomplete items included ten bank accounts, five credit cards and a listing of six other business statements and reports. No records of real estate holdings were provided. Plaintiff's counsel wrote to defendant's counsel to resolve the discovery matters on July 14, 2010, August 19, 2010, September 1, 2010 and October 18, 2010. No further documents were provided in response to these four letters.

On November 4, 2010 this instant Motion for Contempt Re: Discovery Compliance (# 137.00) was filed. In that Motion the plaintiff requested the following relief: (1) a finding of contempt; (2) $100.00 per day retroactive to April 16, 2010 as per the March 29, 2010 order of Malone, J.; (3) a preclusion of the defendant from offering earnings evidence; (4) a negative inference; (5) pendente lite alimony and support increase to

$25,000 per month based on the documents provided; and (6) attorney fees and costs.

The court finds that the two December 11, 2009 discovery requests (# 126.00) are orders of this court pursuant to Practice Book § 13-6, 13-9, 25-31 and 25-32. The court finds that the court has ordered the defendant to comply with the two December 11, 2009 discovery requests (# 126.00) on January 19, 2010 (Shay, J.); February 16, 2010 (Shay, J.) and March 29, 2010 (Malone, J.). The court finds that the order to be complied with was reasonably clear.

***4** The court finds that the documents provided to the plaintiff on April 16, 2010 were incomplete and failed to minimally respond to the income, assets and financial matters addressed in the two December 11, 2009 requests (# 126.00). The court finds that the defendant's attempted compliance after April 16, 2010 did not correct the deficiencies noted in plaintiff's April 19, 2010 list. (# 137.00, Exhibit F.). The court finds that the defendant is in violation of the two December 11, 2009 discovery requests as ordered by the Practice Book and by the three separate court orders.

Practice Book Section 25-31 incorporated the discovery sanction sections of the Practice Book for family matters. Among the sanctions that may be imposed are: "The entry of an order that the matters regarding which the discovery was sought or other designated facts shall be taken to be established for the purposes of the action in accordance with the claim of the party obtaining the order ." P.B. § 13-14(b)(3) and "The entry of an order prohibiting the party who has failed to comply from introducing designated matters in evidence." P.B. § 13-14(b)(4). Due to the defendant's continuing failure to provide financial discovery both as to the filing of an updated financial affidavit and complete compliance with the two December 11, 2009 discovery requests, the court finds that sanctions in proportion to the violation must be imposed including two orders under P.B. § 13-14(b)(3) and (4) as to the defendant's income. This court finds that three court sanctions have already been imposed: January 19, 2010 for compliance, February 16, 2010 for compliance by a date certain and March 29, 2010 for compliance by a new date certain coupled with a per diem charge for failure of compliance beyond that new date certain.

On November 22, 2010 the court, Malone, J. appointed Attorney Jessica Esterkin as a Special Discovery Master. The order further stated: "She should meet with the parties by Dec. 3rd, 2010 to go through discovery issues." Attorney Esterkin attended the two court hearings presided over by the undersigned on December 10, 2010 and January 11, 2011. Despite her efforts, the defendant failed to comply with the two December 11, 2009 requests for discovery. The court finds that progressive sanctions have been imposed on the defendant.

ORDER

1. The court finds that the defendant is in violation of the two discovery requests dated December 11, 2009 (# 126.00) and these requests have been ordered by the court to be complied with.

2. The court hereby orders the defendant to comply completely, fully, accurately and timely with the two December 11, 2009 requests (# 126.00) by Wednesday, February 23, 2011 at 4:00 p.m. at the office of the plaintiff's counsel of record.

3. The court hereby assigns this instant Motion for Contempt Re: Discovery Compliance dated November 4, 2010 (# 137.00) for a short calendar hearing on Monday, February 28, 2011 at 9:30 a.m. in Courtroom 3A, Superior Court, 123 Hoyt Street, Stamford, Connecticut, 06905. Both parties and their counsel shall be present.

***5** 4. The defendant is to pay the attorney fees and disbursements incurred by the Special Discovery Master, Attorney Jessica Esterkin, by Wednesday, February 23, 2011 at 4:00 p.m. Attorney Esterkin shall submit to the defendant's counsel with a copy to the plaintiff's counsel, a statement of fees and costs requested on or before February 1, 2011. This statement shall not be filed with the court. Any issues concerning the fees and costs of Attorney Jessica Esterkin and the payment of these fees and costs will be heard by the court on the February 28, 2011 hearing, including but not limited to whether the defendant paid these fees and costs to Attorney Esterkin by Wednesday, February 23, 2011 at 4:00 p.m.

5. On March 29, 2010 J. Malone ordered: "If not provided $100.00 per diem to the moving party." The plaintiff is the moving party. The discovery was due on April 16, 2010 as per Judge Malone's March 29, 2010 order. As of January 11, 2011 the defendant had not complied with the discovery orders. The court hereby continues J. Malone's order as an order of this court.

6. This court orders that the defendant pay to the plaintiff the sum of $27,000 for the 270 days from April 17, 2010 through and including January 11, 2011. That $27,000 shall be delivered by Wednesday, February 2, 2011 at 4:00 p.m. at the office of the plaintiff's counsel of record by personal check, bank check, certified check or money order. No cash or cash equivalent shall be delivered.

7. If said payment of $27,000 is not so delivered, by Wednesday, February 2, 2011 at 4:00 p m. the plaintiff may file the appropriate motion and request further sanctions. Those further motions and/or requests are also assigned for a hearing on Monday, February 28, 2011 at 9:30 a m. in Courtroom 3A, Superior Court, 123 Hoyt Street, Stamford, Connecticut, 06905.

8. The court finds that the last federal income tax return filed by the defendant prior to the commencement of this dissolution of marriage action was the 2007 Form 1040. (Exhibit 1, January 11, 2011 hearing.) The court notes that a portion of the W-2 income set forth in that income tax return was paid to the plaintiff, Michelle Martucci, and the September 21, 2009 court order prevented the plaintiff from receiving any further employment remuneration from her former employer, Tucci. Therefore all of the income sources set forth in that 2007 income tax return are now available to the defendant. (Exhibit 1, January 11, 2011 hearing, $896,835 "total income.") In accordance with P.B. § 13-14(b)(3) the court finds that the plaintiff sought discovery as to the defendant's income. Since the defendant has failed to provide such discovery so the plaintiff could more accurately determine his income, the court finds that an order in accordance with P.B. § 13-14(b)(3) is a measured appropriate sanction.

The court finds that the defendant's current annual income from his salary, wages, business profits, rents, royalties, partnerships, S corporations, etc. is established at $896,835. Said $896,835 shall be used by this court and future courts as the defendant's current annual income for all purposes in this instant dissolution of marriage action.

***6** 9. In the event the defendant complies with the two December 11, 2009 discovery requests, the defendant shall be permitted to file a Motion with this court in order to modify and/or eliminate order # 8 that the defendant's current income for all purposes is established at $896,835 annually.

10. The defendant is prohibited from introducing any evidence regarding his income, earnings, and earning capacity for so long as order # 8 remains in effect pursuant to P.B. § 13-14(b)(4).

11. The plaintiff's request for attorney fees will be considered at the February 28, 2011 hearing.

12. The court will determine at the February 28, 2011 hearing if the defendant should be found in contempt.

13. The court retains jurisdiction for further discovery sanctions pursuant to this November 4, 2010 Motion for Contempt Re: Discovery Compliance (# 137.00).

14. This court has entered sanctions pursuant to P.B. § 13-14(b)(3) and P.B. § 13-14(b)(4) solely as to the defendant's current annual income. The court reserves the right to enter further sanctions as to any other financial or factual issues including but not limited to assets, liabilities income and expenses.

All Citations

Not Reported in A.3d, 2011 WL 590736

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UNPUBLISHED OPINION. CHECK COURT RULES BEFORE CITING.

Superior Court of Connecticut, Judicial District of Litchfield.

NEW ENGLAND BANK

v.

Richard A. GREEN, Sr. et al.

No. CV106002946S.
|
Feb. 4, 2011.

Opinion

JOHN A. DANAHER, III, J.

***1** The plaintiff moves to compel defendants, Richard A. Green, Sr., and Stephen E. Green, Jr., ("the defendants") to attend a deposition. If either defendant fails to attend the deposition, the plaintiff asks the court to issue a capias for the arrest of the nonappearing party. The motion to compel is granted.

FACTUAL BACKGROUND

The plaintiff initiated this action on August 12, 2010, seeking a prejudgment remedy against the defendants up to the value of $750,000. The plaintiff asserts that in 2004 the defendants agreed to be responsible for a May 24, 2004, loan made to an entity known as "ERA II." The original amount of the loan is alleged to have been $736,000. The plaintiff claims that the loan is in default with a principal balance, as of June 21, 2010, in the amount of $531,799.95 and accrues interest at the rate of $75.88 per day. The defendants did not appear in this action and were defaulted on September 16, 2004.

The plaintiff attempted to depose Richard A. Green, Sr., pursuant to a notice of deposition and subpoena duces tecum that a marshal served on Richard A. Green, Sr., on September 22, 2010. The deposition was originally scheduled to take place on October 6, 2010, but was rescheduled to October 7, 2010. The plaintiff's counsel notified Richard A. Green, Sr., of the rescheduled deposition by letter, but Richard A. Green Sr., did not appear for the deposition on either October 6, 2010, or October 7, 2010. The plaintiff similarly attempted to depose Stephen E. Green, Jr., on the same dates that Richard A. Green, Sr. was to be deposed. The plaintiff was unable to make personal service on Stephen E. Green, Jr. but did provide him with notice of the deposition together with a designation of documents to be produced at the deposition.

The plaintiff asserts that neither of the defendants contacted plaintiff's counsel indicating, for any reason, that they could not attend the deposition. The plaintiff attached a copy of the notice of deposition for each defendant, and a copy of the marshal's return of service regarding Richard A. Green, Sr., to his motion to compel.

The plaintiff wishes to depose the defendants regarding the whereabouts and/or the disposition of heavy equipment that was allegedly purchased with the loan proceeds that are the subject of this action. The plaintiff asks this court to order the defendants to appear and be deposed and to produce the documentation that was already served upon them. If either defendant fails to appear for such a deposition, the plaintiff seeks a capias for the arrest of the nonappearmg defendant.

DISCUSSION

The Practice Book provides that "at any time after the commencement of the action or proceeding ... [a party may] take the testimony of any person, including a party, by deposition upon oral examination. The attendance of witnesses may be compelled by subpoena as provided in Section 13–28." Practice Book § 13–26. Practice Book § 13–28(b) provides that a judge "may issue a subpoena, upon request, for the appearance of any witness before an officer authorized to administer oaths within this state to give testimony at a deposition subject to the provisions of Sections 13–2 through 13–5, if the party seeking to take such person's deposition has complied with the provisions of Section 13–26 and 13–27." Practice Book § 13–27(a) provides that "[a] party who desires to take the deposition of any person upon oral examination shall give reasonable notice in writing to every other party to the action. Such notice ... shall be served upon each party or each party's attorney in accordance with Sections 10–12 through 10–17. The notice shall state the time and place for taking the deposition, the name and address of each person to be examined ... If a subpoena duces tecum is to be served on the person to be examined, the designation of the

materials to be produced as set forth in the subpoena shall be attached to or included in the notice." General Statutes § 52–143(a) provides: "[s]ubpoenas for witnesses shall be signed by the clerk of the court or a commissioner of the Superior Court and shall be served by an officer, [or] indifferent person ... The subpoena shall be served not less than eighteen hours prior to the time designated for the person to appear, unless the court orders otherwise."

***2** The court finds that the plaintiff complied with all applicable provisions of the Practice Book and General Statutes § 52–143(a). There is nothing in the record, to date, that justifies the defendants' failure to appear for their depositions. The court finds that the plaintiff has properly filed its motion to compel. A motion to compel is governed by Practice Book § 13–14 which provides in relevant part: "(a) If any party ... has failed to appear and testify at a deposition duly noticed pursuant to this chapter ... the judicial authority may, on motion, make such order as the ends of justice require. (b) Such orders may include the following ... (2) The award to the discovering party of the costs of the motion, including a reasonable attorneys fee ..." "The granting or denial of a discovery request rests in the sound discretion of the court." *Standard Tallow Corp. v. Jowdy,* 190 Conn. 48, 57, 459 A.2d 503 (1983).

The defendants were each properly summoned to appear at a deposition. "In our statutes, the verb 'summon' does not mean to ask or request to attend or appear, but to command to attend or appear, usually at a legislative or judicial proceeding. More than a hundred years ago, our Supreme Court recognized the duty of citizens to testify 'when legally required to do so.' *In re Clayton,* 59 Conn. 510, 521, 21 A. 1005 (1890). The procedure for 'summoning' a witness is usually to serve him with a subpoena or a capias." *Andover Lake Management v. Andover,* Superior Court, judicial district of Tolland, Docket No. 50306 (October 17, 1995, Rubinow, J.).

General Statutes § 52–143(e) provides in relevant part: "if any ... person upon whom a subpoena is served to appear and testify in a cause pending before any court and to whom one day's attendance and fees for traveling court have been tendered, fails to appear and testify, without reasonable excuse, he shall be fined not more than twenty-five dollars and pay all damages to the party aggrieved; and the court or judge, on proof of the service of a subpoena containing the statement as provided in subsection (d), or on proof of the service of a subpoena and the tender of such fees, may issue a capias directed to some proper officer to arrest the witness and bring him before the court to testify." The "issuance of a capias is in the discretion of the court ... [which] has the authority to decline to issue a capias when the circumstances do not justify or require it." (Internal quotation marks omitted.) *Housing Authority v. DeRoche,* 112 Conn.App. 355, 372–73, 962 A.2d 904 (2009).

The plaintiff has met all requirements precedent to the issuance of a capias. Indeed, the plaintiff produced a letter, allegedly signed by both defendants, in which they appear to claim that they are not subject to the jurisdiction of this court.[1] Under these circumstances, there is a substantial basis for the issuance of a capias for each of the defendants. Nonetheless, the court will not, at this stage, exercise its discretion to issue a capias.

***3** The court orders Richard A. Green, Sr., 63 Eagle Ridge, Torrington, CT 06790, to appear for a deposition to be held at the Litchfield Courthouse, 15 West Street, Litchfield, Connecticut, on the 17th day of March 2011, at 11:00 am. The plaintiff will arrange for the service of this order by an officer or indifferent person, together with the designation of materials to be produced by Richard A. Green, Sr. If service cannot be effected, the plaintiff will notify the deponent of the scheduled deposition by regular mail, postage prepaid, and by certified mail.

Following the plaintiff's deposition of Richard A. Green, Sr., on the date and at the time set forth herein, the court will make itself available to the plaintiff to consider any appropriate claims for costs and attorneys fees associated with the originally scheduled deposition and this motion. If Richard A. Green, Sr., fails to appear on the date and at the time set forth herein, or fails to produce the designated materials, or fails to respond to the deposition questions in good faith, the court will make itself available to hear the plaintiff's request for the issuance of a capias or any other appropriate order.

The court also orders Stephen E. Green, Jr., 24 Camp Dutton Road, Litchfield, CT 06759, to appear for a deposition to be held at the Litchfield Courthouse, 15 West Street, Litchfield, Connecticut, on the 17th day of March 2011, at 12:00 pm. The plaintiff will arrange for the service of this order by an officer or indifferent person, together with the designation of materials to be produced by Stephen E. Green, Jr. If service cannot be affected, the plaintiff will notify the deponent of the scheduled deposition by regular mail, postage prepaid, and by certified mail.

Following the plaintiff's deposition of Stephen E. Green, Jr., on the date and at the time set forth herein, the court will make itself available to the plaintiff to consider any appropriate claims for costs and attorneys fees associated with the originally scheduled deposition and this motion. If Stephen E. Green, Jr., fails to appear on the date and at the time set forth herein, fails to produce the designated materials, or fails to respond to the deposition questions in good faith, the court will make itself available to hear the plaintiff's request for the issuance of a capias or any other appropriate order.

So ordered.

All Citations

Not Reported in A.3d, 2011 WL 726697

Footnotes

1 The letter states, in relevant part, “The court's alleged notices and claims don't cut it.” The defendants also express their view that “properly executed process service is not merely the delivery of papers—it requires that they be accepted ...” The latter assertion is, of course, incorrect. *Phoenix Limousine Service, Inc. v. Hilchen,* Superior Court, judicial district of Fairfield, Docket No. CV 000378706 (June 13, 2001, Skolnick, J.) (“Service of a subpoena ‘upon’ a person does not require physical acceptance of it, if the person is given notice of it and its contents”).

1990 WL 271143

UNPUBLISHED OPINION. CHECK COURT RULES BEFORE CITING.

Superior Court of Connecticut,
Judicial District of New Haven.

Nancy SANSONE, et al.
v.
Matthew HASELDEN.
Jamie L. MORRIS
v.
Walter T. WILLIS, et al.

Nos. 28 83 29, 29 31 67.
|
April 18, 1990.

MEMORANDUM OF DECISION ON THE RIGHT TO COMPEL AN OUT-OF-STATE DEFENDANT'S DEPOSITION IN CONNECTICUT

BERDON, Judge.

***1** The defendant Matthew Haselden who resides in Texas and the defendant Walter T. Willis who resides in Missouri seek orders protecting them from being required to appear in Connecticut to have their depositions taken.

In 1978, § 246(c) of the Rules of Practice was adopted which provided that depositions of an out-of-state defendant may be taken in any county in this state in which he was personally served or taken by notice "at any place within thirty miles of the defendant's residence or within the county of his residence or at such other place as is fixed by order of the court." This rule is consistent with the general practice before the federal courts. 4 Moore, Federal Practice, § 26.70 (2d ed.1989).

In both the above entitled cases, the defendants were neither personally served,[1] nor, of course, is their place of residence within thirty miles of the State of Connecticut. Accordingly, both plaintiffs rely on that portion of § 246(c) which authorizes the court to fix the place of the deposition.

No hard rule should be set to govern when the court should exercise its discretion to order an out-of-state defendant to appear in Connecticut or some other place not specifically provided for in § 246(c) for a deposition. The court in exercising its discretion must do so in a manner which accommodates the special circumstances of each case. Some of the factors it should consider are the financial circumstances of the parties, whether the plaintiff seeking to take the deposition of the out-of-state defendant offers to pay his or her travel and living expenses, whether the defendant was personally served in Connecticut with the writ and complaint while he or she was a resident and thereafter voluntarily moved out of Connecticut, the hardship that travel may impose on a party, the availability of counsel being able to promptly resolve disputes which require a judicial determination if the deposition is taken in the forum, the effectiveness of obtaining the discovery through other means such as written iterrogatories or the taking of the defendant's deposition in Connecticut at the commencement of trial, and such other considerations.

In *Sansone,* the plaintiff seeks to take the defendant's deposition in Connecticut on the grounds that the motor vehicle accident which is the subject matter of the suit occurred in Connecticut, the defendant was personally served with the writ and complaint when he was a resident of Connecticut, a Connecticut attorney filed an appearance on the defendant's behalf, and sometime thereafter the defendant voluntarily removed himself from the state to an undisclosed address in Texas. Furthermore, the plaintiff has submitted an affidavit stating that she is unemployed, her husband is disabled, and that they do not have sufficient funds to pay her attorney to travel to Texas nor funds to reimburse the defendant for his travel expenses. Under these circumstances the defendant Matthew Haselden, at his own expense, will be required to attend a deposition at a mutually convenient place and time in the state of Connecticut. See *McLean v. Smith,* 13 Conn.L.Trib. 42 (October 26, 1987).

***2** In *Morris,* the defendant was at all relevant times a resident of Columbus, Missouri, was involved in a vehicular accident with the plaintiff in this state and was served pursuant to the motor vehicle long arm statute, General Statutes § 52-62. These facts differ materially from those of *Sansone.* Nevertheless, in urging that the court exercise its discretion to compel the defendant at his expense to give his deposition in this state, the plaintiff argues that she is without funds to take the defendant's deposition in Missouri or pay his expenses to travel to Connecticut. These reasons, together with any other hardship or other matters the court should consider, should be put in an affidavit form by the plaintiff. The defendant should

also be given an opportunity to submit an affidavit regarding his circumstances. Accordingly, the protective order sought by the defendant *Walter T. Willis* is granted without prejudice on the part of the plaintiff to seek the court's permission to have the defendant's deposition taken in Connecticut upon filing a motion and appropriate supporting affidavit.

In sum, in the case of *Nancy Sansone v. Matthew Haselden* (No. 28 83 29) the plaintiff's motion to fix the place for defendant's deposition (No. 117) is granted in that the deposition shall take place in Connecticut, at a place and time mutually convenient to the parties, and the defendant shall pay his own expenses to attend said deposition. In the case of *Jamie L. Morris v. Walter T. Willis* (No. 29 81 67), the defendant's motion for protective order (No. 112) is hereby granted without prejudice to the plaintiff taking further action on this issue.

All Citations

Not Reported in A.2d, 1990 WL 271143, 1 Conn. L. Rptr. 520

Footnotes

1 The plaintiff *Morris* also argues that since § 52-62 of the General Statutes authorizes service of a process on the Commissioner of Motor Vehicles for out-of-state residents, that such service on the Commissioner constitutes the personal service required by § 246(c)(1) of the Practice Book which would require the defendant to attend a deposition in Hartford County. Service of a subpoena on the commissioner is clearly not service of process authorized by § 52-62, but merely constructive or substituted service. *Larrivee v. McGann,* 26 Conn.Sup. 508, 509 (1967). Proper service of a subpoena requires personal service. See *Gibney v. Lewis,* 68 Conn. 392 (1986); 81 Am.Jur. 2d, Witnesses § 12.